

THE HONORABLE FRED Van SICKLE

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES  
LITIGATION

No. CV-04-025-FVS

CLASS ACTION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

CLASS REPRESENTATIVES MOTION  
FOR PRELIMINARY APPROVAL OF  
PARTIAL SETTLEMENT WITH ROTH  
CAPITAL PARTNERS, LLC,

WITHOUT ORAL ARGUMENT

HEARING DATE: March 2, 2010  
6:30 P.m.

MOTION FOR PRELIMINARY APPROVAL OF PARTIAL SETTLEMENT  
WITH ROTH CAPITAL PARTNERS, LLC - 1 of 5  
(Case No. CV04-0025-FVS)  
[1459627 v7.doc]

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1 Plaintiffs, pursuant to F.R.Civ.P. 23, hereby respectfully move the  
2 Court for entry of:

- 3 • Order Bifurcating and Staying Claims Against Defendant Roth  
4 Capital Partners, LLC;
- 5 • Order Preliminary Approving Settlement Between The Class and  
6 Defendant Roth Capital Partners, LLC.

7 This Motion is supported by the attached Memorandum, Declaration  
8 and exhibits, and by all other pleadings and filings in this litigation.

9 Dated this 31st day of January, 2010.

10 GORDON, THOMAS, HONEYWELL, MALANCA,  
11 PETERSON & DAHEIM LLP

12 By s/Bradley B. Jones  
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14 Kenneth G. Kieffer, WSBA No. 10850  
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15 HAGENS BERMAN SOBOL SHAPIRO LLP

16 By s/Tyler S. Weaver  
17 Tyler S. Weaver, WSBA No. 29413  
18 Jeniphr A.E. Breckenridge, WSBA 21410  
19 Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The Court or the CM/ECF system will send notification of such filings to the CM/ECF participants listed below, and I will mail the same via U.S. Postal Service to the non-CM/ECF participant(s).

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MOTION FOR PRELIMINARY APPROVAL OF PARTIAL SETTLEMENT

WITH ROTH CAPITAL PARTNERS, LLC - 3 of 5

(Case No. CV04-0025-FVS)

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MOTION FOR PRELIMINARY APPROVAL OF PARTIAL SETTLEMENT  
WITH ROTH CAPITAL PARTNERS, LLC - 4 of 5  
(Case No. CV04-0025-FVS)  
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26 MOTION FOR PRELIMINARY APPROVAL OF PARTIAL SETTLEMENT  
WITH ROTH CAPITAL PARTNERS, LLC - 5 of 5

(Case No. CV04-0025-FVS)

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## **PROPOSED ORDERS**

**PROPOSED ORDERS**

THE HONORABLE FRED VAN SICKLE

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES ) No. CV-04-025-FVS  
LITIGATION )

CLASS ACTION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**[PROPOSED] ORDER  
BIFURCATING AND STAYING  
CLAIMS AGAINST DEFENDANT  
ROTH CAPITAL PARTNERS, LLC**

1 Having considered the Motion and Memorandum of Plaintiffs, pursuant to  
2 Federal Rule of Civil Procedure 42(b), for an Order bifurcating and staying all claims  
3 against Defendant Roth Capital Partners, LLC ("Roth"),

4 **IT IS HEREBY ORDERED:**

5 1. This Order incorporates by reference the definitions in the Settlement  
6 Agreement.

7 2. The Court has personal jurisdiction over all parties to the Action,  
8 including all Class Members, Roth and the non-settling defendants, and subject  
9 matter jurisdiction over the Action.

10 3. In light of the Settlement between the Class and Roth pursuant to the  
11 Settlement Agreement dated January 29, 2010 and the trial scheduled to commence  
12 in the Action against non-settling defendants on March 15, 2010, and in order to  
13 allow the Settling Parties to implement and seek final approval of the Settlement, it  
14 will further the interests of convenience, avoiding prejudice to the parties and  
15 expediting and economizing to bifurcate any and all claims that have been made,  
16 could be made or may be made in this Action against Roth pursuant to Federal Rule  
17 of Civil Procedure 42(b).

18 4. All claims, demands and causes of action, whether known or unknown,  
19 that have been asserted, could have been asserted or might be asserted by the Lead  
20 Plaintiffs, the Class, any non-settling defendant or any other person or entity in this  
21 Action or any other proceeding or forum, which are based upon or relate to the  
22 matters alleged in the Consolidated And Fourth Amended Class Action Complaint  
23 are hereby: (i) bifurcated from the Action and shall instead be maintained in a  
24 separate proceeding before this Court (the "Roth Action"); and (ii) stayed pending  
25 determination by the Court as to whether the Settlement, as set forth in the  
26 Settlement Agreement, is fair, reasonable and adequate and should be finally  
27 approved and whether the Judgment dismissing the Action and the Roth Action with  
28



1 prejudice as to Roth, including a provision barring any claims against the Roth  
2 Released Parties, should be entered.

3       5. In the event the Action proceeds to trial as to a non-settling  
4 defendant(s): (i) the Class may not use any finding, ruling, order, trial testimony,  
5 verdict or judgment or any attribution of fault or responsibility to Roth, for any  
6 purpose whatsoever against Roth in the Action, the Roth Action or in any other  
7 proceeding or forum; (ii) any finding, ruling, order, trial testimony, verdict or  
8 judgment or any attribution of fault or responsibility to Roth, shall not be admissible  
9 for any purpose whatsoever as against Roth in the Action, the Roth Action or in any  
10 other proceeding or forum; (iii) any finding, ruling, order, trial testimony, verdict or  
11 judgment or any attribution of fault or responsibility to Roth, shall not constitute  
12 collateral estoppel or res judicata as to Roth in the Action, the Roth Action or in any  
13 other proceeding or forum; (iv) Roth shall not use any finding, ruling, order, trial  
14 testimony, verdict or judgment for any purpose whatsoever against the Class in the  
15 Action or the Roth Action or against the Class in any other proceeding or forum; (v)  
16 any finding, ruling, order, trial testimony, attribution of fault or responsibility to any  
17 other defendant, verdict or judgment shall not be admissible for any purpose against  
18 the Class in the Action or the Roth Action or against the Class in any other  
19 proceeding or forum in any litigation between Roth and the Class; and (vi) any  
20 finding, ruling, order, trial testimony, attribution of fault or responsibility to any  
21 other defendant, verdict or judgment shall not constitute collateral estoppel or res  
22 judicata as to the Class in the Action or the Roth Action or against the Class in any  
23 other proceeding or forum in any litigation between Roth and the Class. If the  
24 Settlement is terminated or fails to become effective for any reason, the Class shall  
25 not be estopped from asserting the liability of Roth in the Action, the Roth Action or  
26 any other proceeding or forum as if no settlement had been negotiated or entered  
27 into, and Roth shall not be estopped from challenging liability in the Action, the Roth  
28

1 Action or any other proceeding or forum as if no settlement had been negotiated or  
2 entered into.

3 6. The Settling Parties shall have the right to move for an order by this  
4 Court modifying the provisions of, or terminating, this Order.

5 **IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

6  
7 UNITED STATES DISTRICT JUDGE

8 Presented by:

9 GORDON THOMAS HONEYWELL LLP  
10

11 By: \_\_\_\_\_  
12 Bradley B. Jones  
13 Attorneys for Plaintiffs and the Class

14 HAGENS BERMAN SOBOL SHAPIRO LLP

15 By: \_\_\_\_\_  
16 Tyler S. Weaver  
17 Attorneys for Plaintiffs and the Class  
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In re METROPOLITAN SECURITIES ) No. CV-04-025-FVS  
LITIGATION )

CLASS ACTION

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
SETTLEMENT BETWEEN THE  
CLASS AND DEFENDANT ROTH  
CAPITAL PARTNERS, LLC**

1 Having considered the Motion and Memorandum of Plaintiffs, pursuant to  
2 Federal Rule of Civil Procedure 23, for an Order preliminarily approving the  
3 proposed settlement (the "Settlement") between the Class and defendant Roth  
4 Capital Partners, LLC ("Roth") in accordance with the terms and provisions of the  
5 Settlement Agreement dated January 29, 2010,

6 **IT IS HEREBY ORDERED:**

7 1. This Order incorporates by reference the definitions in the Settlement  
8 Agreement and the Judgment.

9 2. The Court has personal jurisdiction over all parties to the Action and the  
10 Roth Action, including all Class Members and Roth, and subject matter jurisdiction  
11 over the Action and the Roth Action.

12 3. Without further order of the Court, the Settling Parties may agree in  
13 writing to reasonable extensions of time to carry out any of the provisions of the  
14 Settlement Agreement.

15 4. In the interest of conserving expenses to the Class, pursuant to the terms  
16 of the Settlement Agreement, the Court shall defer approval of the form and manner  
17 of providing notice of the Settlement to the Class, and scheduling a hearing for final  
18 approval of the Settlement and Settlement Agreement (the "Final Approval  
19 Hearing").

20 5. The Court hereby preliminarily approves the Settlement, as embodied in  
21 the Settlement Agreement, as being fair, reasonable and adequate as to the Class  
22 Members, subject to further consideration at the Final Approval Hearing.

23 6. This Order shall become null and void, with the exception of the  
24 Bifurcation Order, and be without prejudice to the rights of the Settling Parties, all of  
25 whom shall be deemed to have reverted to their respective statuses in the Action and  
26 the Roth Action as of January 29, 2010, if: (i) the Effective Date does not occur; or  
27 (ii) the proposed Settlement is terminated or does not become effective for any other  
28 reason. In such event, the Settlement Agreement shall become null and void and

1 have no further force and effect, and the Settlement shall be without prejudice and  
2 none of its terms shall be effective or enforceable.

3 7. The Action is stayed as to Roth in all respects until further order of the  
4 Court, except as may be necessary to implement and effectuate the Settlement and  
5 Settlement Agreement.

6 8. Pending determination by the Court as to whether the Settlement, as set  
7 forth in the Settlement Agreement, is fair, reasonable and adequate and should be  
8 finally approved and whether the Judgment dismissing the Action and the Roth  
9 Action with prejudice as to Roth and whether an order barring claims against the  
10 Roth Released Parties should be entered, no Lead Plaintiff nor any Class Member,  
11 either directly, representatively or in any other capacity, shall assert, commence or  
12 prosecute against any of the Roth Released Parties any of the Roth Released Claims  
13 in this Action or the Roth Action or any other proceeding or forum. This injunction  
14 is necessary to protect and effectuate the Settlement, this Order, and the Court's  
15 flexibility and authority to effectuate the Settlement and to enter judgment when  
16 appropriate, and is ordered in aid of the Court's jurisdiction and to protect its  
17 judgments pursuant to 28 U.S.C. Section 1651(a).

18 9. Pending determination by the Court as to whether the Settlement, as set  
19 forth in the Settlement Agreement, is fair, reasonable and adequate and should be  
20 finally approved and whether the Judgment dismissing the Action and the Roth  
21 Action with prejudice as to Roth and whether an order barring claims against the  
22 Roth Released Parties should be entered, no present or future defendant in the Action  
23 or in the Roth Action, either directly, representatively or in any other capacity, shall  
24 assert, commence or prosecute any claim against any of the Roth Released Parties,  
25 however styled, whether legal or equitable, known or unknown, whether arising  
26 under state law or federal non-securities law, whether for indemnification or  
27 contribution or otherwise denominated (including without limitation claims for  
28 breach of contract or misrepresentation), where the claim is based on, arises out of or

1 relates to claims or allegations asserted in the Action or the Roth Action. This  
2 injunction is necessary to protect and effectuate the Settlement, this Order, and the  
3 Court's flexibility and authority to effectuate this Settlement and to enter judgment  
4 when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its  
5 judgments pursuant to 28 U.S.C. Section 1651(a).

6       10. In the event the Action proceeds to trial as to a non-settling  
7 defendant(s): (i) the Class may not use any finding, ruling, order, trial testimony,  
8 verdict or judgment or any attribution of fault or responsibility to Roth, for any  
9 purpose whatsoever against Roth in the Action, the Roth Action or in any other  
10 proceeding or forum; (ii) any finding, ruling, order, trial testimony, verdict or  
11 judgment or any attribution of fault or responsibility to Roth, shall not be admissible  
12 for any purpose whatsoever as against Roth in the Action, the Roth Action or in any  
13 other proceeding or forum; (iii) any finding, ruling, order, trial testimony, verdict or  
14 judgment or any attribution of fault or responsibility to Roth, shall not constitute  
15 collateral estoppel or res judicata as to Roth in the Action, the Roth Action or in any  
16 other proceeding or forum; (iv) Roth shall not use any finding, ruling, order, trial  
17 testimony, verdict or judgment for any purpose whatsoever against the Class in the  
18 Action or the Roth Action or against the Class in any other proceeding or forum; (v)  
19 any finding, ruling, order, trial testimony, attribution of fault or responsibility to any  
20 other defendant, verdict or judgment shall not be admissible for any purpose against  
21 the Class in the Action or the Roth Action or against the Class in any other  
22 proceeding or forum in any litigation between Roth and the Class; and (vi) any  
23 finding, ruling, order, trial testimony, attribution of fault or responsibility to any  
24 other defendant, verdict or judgment shall not constitute collateral estoppel or res  
25 judicata as to the Class in the Action or the Roth Action or against the Class in any  
26 other proceeding or forum in any litigation between Roth and the Class. If the  
27 Settlement is terminated or fails to become effective for any reason, the Class shall  
28 not be estopped from asserting the liability of Roth in the Action, the Roth Action or

1 any other proceeding or forum as if no settlement had been negotiated or entered  
2 into, and Roth shall not be estopped from challenging liability in the Action, the Roth  
3 Action or any other proceeding or forum as if no settlement had been negotiated or  
4 entered into.

5 11. This Order shall not be construed or used as an admission, concession or  
6 declaration by or against Roth of any fault, wrongdoing, breach, or liability. Nor  
7 shall the Order be construed or used as an admission, concession or declaration by or  
8 against the Class Representatives or the Class, that their claims lack merit, that their  
9 damages are in any way limited, or that the relief requested in the Action or the Roth  
10 Action is inappropriate, or as a waiver by any party of any defenses of claims he, she,  
11 or it may have.

12 12. The Class shall move the Court for an order approving and directing  
13 notice of the Settlement to the Class, and setting a final approval hearing, no later  
14 than the earlier of either (i) final resolution of the Class's claims against the non-  
15 settling defendants in the Action, or (ii) June 15, 2010, or such continued date as the  
16 Class and Roth may agree to in writing.

17  
18 **IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

19  
20 \_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

21 Presented by:

22 GORDON THOMAS HONEYWELL LLP  
23

24 By: \_\_\_\_\_  
Bradley B. Jones  
25 Attorneys for Plaintiffs and the Class

26 HAGENS BERMAN SOBOL SHAPIRO LLP  
27

28 By: \_\_\_\_\_

1 Tyler S. Weaver  
2 Attorneys for Plaintiffs and the Class  
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